

# Order

Michigan Supreme Court  
Lansing, Michigan

April 4, 2007

132850

RUSSELL HILEMAN,  
Plaintiff-Appellee,

v

TRAILER EQUIPMENT, INC., a/k/a TRAILER  
X-PRESS, INC., and ACCIDENT FUND  
INSURANCE COMPANY OF AMERICA,  
Defendant-Appellant.

Clifford W. Taylor,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

SC: 132850  
COA: 265641  
WCAC: 03-000119

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On order of the Court, the application for leave to appeal the November 21, 2006 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REINSTATE the decision of the magistrate. The Court of Appeals erred in affirming the decision of the Workers' Compensation Appellate Commission (WCAC) by equating the plaintiff's testimony about his continuing symptoms with evidence of an ongoing work-related disability. The magistrate found, and the WCAC agreed, that the plaintiff's January 9, 2002 surgery was solely occasioned by a non-occupational condition. The magistrate also found, and the WCAC agreed, that the plaintiff's disabling symptoms, although worsened by work activity, were the result of that non-occupational condition. The magistrate therefore correctly held that work-relationship was not proven by the plaintiff after the date of the surgery, and the WCAC erred as a matter of law in holding otherwise. *Rakestraw v General Dynamics Land Systems, Inc*, 469 Mich 220, 231 (2003).

CAVANAGH and KELLY, JJ., would deny leave to appeal.



t0328

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 4, 2007

*Corbin R. Davis*

Clerk